89-304

Supreme Court, U.S.
FILED
AUG 4 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89 -

IN THE

SUPREME COURT OF THE UNITED STATES

Term, 1989

MARJORIE JOHNSON,

Petitioner,

v.

MONTGOMERY WARDS,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF ILLINOIS

CHICAGO DISTRICT

Marjorie Johnson,
Petitioner
8254 South Buffalo
Chicago, Illinois 60617
(312) 731-8268

STATEMENT OF THE QUESTIONS INVOLVED

1. Whether the Lower Court erred in denying the Petitioner's right to due process of Law?

A. Whether the Lower Court did err in denying Petitioner, causing prejudice against the Petitioner and leaving the Petitioner where her evidence was not produced in court at the time of trial.

B. Whether the Lower Court did err in denying Petitioner causing prejudice against the Petitioner and leaving Petitioner without the Constitutional Rights of life, liberty, and the right of her monies earned from work.

C. The notarized copy of statements from both Petitioner and daughter. Statement from Petitioner as to the person that received the Court summons "quote he is a member of Petitioner's family."

D. There were photostats produced of insurance claims filed for stolen property the television alleged repair was neither

repaired are in my possession at the time it was alleged repaired.

E. Why they were not accepted in evidence?

*All parties to the proceeding in the court below are listed in caption.

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In the

Supreme Court of the United States

Term 1989

Marjorie Johnson

Petitioner

V.

Montgomery Wards

Respondent

Petitions for Writ of Certiorari

to the Supreme Court of Illinois

Petitioner, Marjorie Johnson, petitions the Court to issue certiorari to the Supreme Court of Illinois in this case.

Reference to Lower Court Opinions

On the instant case there were filed two Opinions. Circuit Court Judge Dennis Berkbigler on August 6, 1997 after trial ruled in favor of Respondent.

The Appellant appealed the Lower Court decision to the Honorable Appellate Court of Illinois which affirmed the Lower Court Order in its Opinion dated October 29, 1988.

Appellant Petition for Rehearing and Clarification

Because the Court errors in the application of fact of law. Appellant requested a rehearing and reconsideration which was denied on December of 1988.

The Appellant appealed the Lower Court decision to the Honorable Supreme Court of Illinois which affirmed the Lower Court Order in its Opinion dated May 8, 1989, and no Opinion was filed.

*All Opinions mentioned above can be found in the appendix under separate cover.

Basis of Federal Jurisdiction

The instant case comes before this Court in hopes of rectifying the error made in the Lower Court in denying the Appellant her Constitutional Rights under First, Eighth and Fourteenth Amendments.

Constitutional Rights and the violation thereof of those rights are questioned that fall within the jurisdiction of the Federal Judicial System. Thus this matter has come before this Honorable Court for resolution.

Constitutional Provisions

The issue of the Court's decision being contrary to the law and against Constitutional Rights of the Appellant has been raised at each level of the Court System. However to-date no Court has addressed the issue of Constitutional wrong.

The Lower Court Order is in violation of the Appellant's Constitutional Rights under the First, Eighth and Fourteenth Amendments.

Specifically, and forthright is the Appellant's rights to life, liberty and property. The Appellant seeks redress in this court based upon these violations of her Constitutional Rights and herein sets forth those violations pursuant to Rule 21.1 (F).

III. Appellee should not be allowed the right to, not inform Appellant the nature of the case denying Appellant the opportunity to produce witnesses also documentation relevant to the case.

1. The notarized copy of statement from my daughter.

2. Statement from Defendant as to the person that received court summons which was illegally served stating he is a member of her family.

3. Photostats of the policy number of my insurance company that covered the loss of property claimed in said policy. Only three of the five items stolen were replaced. The Ward's television was not one of them.

IV. The Lower Court's award was not fair, just or equitable. The Appellant seeks relief from the consequences of this error made on the part of the Lower Court. This is a valid position and one that should be considered by this Honorable Court.

Statement of the Case

This is an appeal from the Order of the Lower Court affirming the Judgment which favored the Appellee, in the Circuit Court of Cook County, Illinois on August 6, 1987. On August 24, 1987 Appellant filed Notice of Appeal. The original amount of claim was for $1,139.43. The figures were adjusted as a result of prior agreement negotiated before the judgment was ever entered.

The instant case began with a final decree of judgment on or about August 6, 1987 with the amounts payable immediately. The counsel's fees were included in the final degree. The Appellant then filed an appeal. On August 24, 1987 after serving Appellee's attorney which were not respected. They have never responded to any of the documented records. All of pursuant hearings have been ignored by Appellee's attorneys. I question why the case was not dismissed from a result of opposing attorneys not filing a response? Instead the Lower Court ruled against

Appellant, instead, the Court gave a number of interrogatories stating my case was not substantial. On November 14, 1988 I filed a Petition for Rehearing and Clarification. The Lower Court denied the Petition without giving a reason.

None of the issues were considered at the time of Appeal or at Rehearing.

The Appellee would receive $516.43 and the attorneys would receive $200.00 or whatever arrangement was made.

The Court has misapprehended the application of fact.

Appellant produced sworn certified documents to the fact there were no repairs made in her home. Also there was a blank application in the original file. No documented evidence to support their case. As stated in the court decision, "there was a series of documents." They were not present in the file when Appellant had it pulled.

The Court gave three continuances to Respondent's attorney. Dates 10/29/86-1/7/87 - 1/7/87-6/4/87 - 6/4/87-8/6/87. Final hearing Appellant was not prepared. Her opportunity to produce witness and allowed access to files to prepare her case were not made available.

Little or no consideration to any of the issues presented in the trial or Appeal Petitions of the Appellant. Thus when the Lower court handed down the final Court Order Memorandum and Opinion on May 8, 1989, the Appellant felt compelled to appeal to this Honorable Court these Issues The Supreme Court affirmed the Lower Court Opinion without consideration of the Constitutional violation imposed upon the Appellant. The Supreme Court of Illinois failed to hear the case at all. Thus, the Appellant has come to the United States Supreme Court in search of a desideratum which is just and constitutional. This is where the case now stands.

Appellant personally made copies of everything that was in the court file. There was nothing there.

Also, Appellant prays that the Court will hear her plea. Appellee has not adhered to Court procedure. They filed no response to Appellant's court appeal after having been given additional time to do so. With Appellant's evidence Appellant prays to have her day in court.

Wherefore for the foregoing reason Appellant prays the Appellant filing pro se will be given consideration and the case against her be reversed. With respect Appellant prays the court will hear her plea. Certain court records were missing from the file when examined by Appellant.

Statement of Reason for Appeal

The Appellate Courts below did error in deciding a question of substance the Constitutional rights of Appellant were violated which places this case in the jurisdiction of this Honorable Court.

I. As the Order now stands, the service contract for the maintenance of appliances purchased from Montgomery Wards from 1976 through 1985 was maintained. In 1985 the contract for service was cancelled by telephone call to the service office in Posen, Illinois.

In court a service contract was presented to the court which I denied having signed. The attorney for Appellee stated my daughter (who was not present) had signed in my absence for repairs on a television that was not being used. Examination of the court file at a later date, the above mentioned contract could not be found. It was not a part of the court's record of evidences. As

a result I have never really seen the signature on the alleged document.

II. At the time the repairs were allegedly made Appellant had sustained a burglary. All home and video equipment had been stolen. There is a police report on file, also an insurance record of the five items stolen, over $3,000.00 in equipment. Only three were replaced and the Montgomery Ward television was not among the items replaced.

Argument

I. The Lower Court did Err in Denying the Appellant's Right to Due Process of Law.

The Court system below had erred in denying the Appellant her right to due process of law. The Courts below have failed to consider the fact a call by telephone to their service center in Pose, Illinois should have been respected and cancellation procedures should have taken place. Instead it was disregarded and monies were added to the account, which I had no knowledge of until August 6, 1987, the final day of Court. If a call to Customer Service regarding cancellation of the account also payment of the bill is accepted why then was the service contract not canceled? The amount of the original judgment $1,139.43 monies paid by agreement #423.00 total amount owed. The $716.43 is attorney's fee about $200.00 are more $516.43 monies owed Montgomery Wards are

part thereof. Appellant appeals to the Court and requests that Appellee answer questions. There are affidavits to confirm statements of record such as signatures, police reports, insurance claims, also recovery forms.

The Court did err in denying the Appellant her Constitutional Rights to life, liberty and property.

II. The Lower Court failed to conduct a fair and impartial hearing by accepting frivolous issues.

III. The Lower Court did err in denying appellant causing prejudice against the Appellant and leaving the Appellant responsible for the judgment as entered without the Constitutional Rights.

The Lower Court did err in issuing an order which violated the Appellant's Constitutional Rights under the First, Eighth and Fourteenth Amendments.

III. Appellee should not be allowed the right to, not inform Appellant the nature of the case denying Appellant the opportunity to produce witnesses also documentation relevant to the case.

1. The notarized copy of statement from my daughter.

2. Statement from Defendant as to the person that received court summons which was illegally served stating he is a member of her family.

3. Photostats of the policy number of my insurance company that covered the loss of property claimed in said policy. Only three of the five items stolen were replaced. The Ward's television was not one of them.

IV. The Lower Court's award was not fair, just or equitable. The Appellant seeks relief from the consequences of this error made on the part of the Lower Court. This is a valid position and one that should be considered by this Honorable Court.

Petitioner did seek help from attorneys but was told their services would far exceed the amount owed. That is why I chose to go Pro Se.

Since coming to the Supreme Court of the United States the attorney for the Respondent has taken action and raised the cost $181.00 the final cost $907 from $716. Monies are being taken from me.

Thus the Petitioner prays for a decision which is just and fair. She does take care of her responsibilities.

Reference to Lower Court Opinions

On the instant case there were filed two Opinions. Circuit Court Judge Dennis Berkbigler on August 6, 1987 after trial ruled in favor of Respondent.

The Appellant appealed the Lower Court decision to the Honorable Appellate Court of Illinois which affirmed the Lower Court Order in its Opinion dated October 29, 1988.

Appellant Petition for Rehearing and Clarification

Because the Court errors in the application of fact of law. Appellant requested a rehearing and reconsideration which was denied on December of 1988.

The Appellant appealed the Lower Court decision to the Honorable Supreme Court of Illinois which affirmed the Lower Court Order in its Opinion dated May 8, 1989, and no Opinion was filed.

*All Opinions mentioned above can be found in the appendix under separate cover.

Under the First Amendment the Appellant has a right "to petition the government for a redress of grievances." The Lower Courts have thwarted the Appellant's effort to seek a redress of grievances and to obtain a Reconsideration also reversal of its decision.

The Court's treatment of the Appellant in this matter is a violation of the Appellant's Eighth Amendment rights. Under the Amendment the Court cannot inflict "cruel and unusual punishment." The Lower Court has furnished the Appellant its lack of her request under her Petition for Rehearing and Reconsideration.

The Lower Court did err in violating the Appellant's Fourteenth Amendment rights. Under the Fourteenth Amendment "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the Law."

Thus, once again the Lower Court made a decision that was not just or fair. The Court did not consider the issues before denying the Appellant her Constitutional Rights. Appellant does work and take care of herself and her grandson.

Code Cir Prac. §112-4117.

Serving on Sunday: If it shall appear by the affidavit that a debtor is actually absconding or concealed or stands in defiance of an officer duly authorized to arrest him or her on civil process, or has departed this state with the intention of having his or her effects and personal estate removed out of the state or intends to depart with such intentions, it shall be lawful the clerk to issue and sheriff or other officer to serve a certified copy of the order for attachment against such debtor on a Sunday as on any other day.

Amend. by P.A. 83-707 (eff. 9-23-83)

Construction against Party Preparing Contract

Generally an ambiguous contract will be construed most strongly against the party who prepared the contract.

Library References:

C.J.S. Contracts §324 Contracts 155

Generally speaking, contracts that contain ambiguities,[47] uncertainties,[48] vague language,[49] inconsistencies,[50] conflicting terms,[51] or words of doubtful import,[52] will be construed against the drafter. Those contracts will be construed most favorably toward the other party.[53]

Indeed ambiguous contracts are said to be construed most strongly,[54] or most strictly[55] against the drafter. In construing reservations or conditions inserted in a contract for the benefit of the party who makes them, where there are clauses which are doubtful or ambiguous, that construction will be adopted which is least favorable to the party making them.[56]

An ambiguous contract is construed against the party who drafted it since he chose the words that were used.[57]

First Capitol Mtg. V. Tulandis Const. Corp. 1977. 365 NE 2d667 ILL Dec. 78147 ILL App 3d699. See also Fuentes Vs. Fuentes 1961 188 CAL App 2nd 715 10 CAL. Rplr 732; Baldwin & Baldwin (1944), 67.

241 Contracts Ch. 7

241 Implied Terms in General

Implied terms are as much a part of the contract as that which is expressed, since a contract includes not only what the parties expressly state in it, but also those things which the law implies as a part of it.

Library References:

C.J.S. Contracts §328-330 Contracts -- 168

What is implied in a contract is as much a part of the contract as what the parties expressly state in it, but also those things which the law implies as a part of it.[70]

Thus, where a contract, from its nature, requires some action by one party or the other, or the cooperation of both, there is an implied promise to perform the act or give cooperation although the promise is not expressed.[71] Similarly, one who by a contract confers on another a right or imposes a duty impliedly agrees not to defeat the right or make impossible the performance of a duty by any acts of his own.[72]

The basis for an implication in a contract is that the parties would have expressed that which the law implies had they thought of it or had they not supposed it was unnecessary to speak of it because the law provided for it.[73] Thus whatever obligation is sought to be raised by legal implication must be of such a character as the court may assume would have been made by the parties, had their attention been called to the subject and their conduct

inspired by principles of justice.[74] The law will not imply agreements which have no foundation in necessity, and which it cannot be supposed that persons or ordinary prudence would have included in the contract.[76]

Whether an implied agreement is to be read into a written agreement depends on the parties' intention[77] and before an obligation will be implied, it must appear that it was so clearly in the contemplation of the parties that they deemed it unnecessary to express it either orally or in writing, or that such an implied covenant is necessary in order to give effect to the purpose of the contract as a whole.[78]

As inferred intention, necessarily implied from an expressed provision may be just as much part of a contract as a clearly expressed undertaking,[78] and it is asserted only to carry out the terms.

In Reed V. Brown 1939 215 Ind 417, 19 NE 2d1015 the court held that the failure of the Appellee to file a brief required the court to reverse if the Appellant's brief made a prima facie showing of reversible error.

In Aquarian Foundation V. KTUW in (1974) N Wash App. 476, 479, 523 P. 2d 969 971, the court is interpreting Rule 41 applied.

BEST AVAILABLE COPY

Conclusion

The Petition for a Writ of Certiorari should be granted and the decision below summarily reversed to uphold the Petitioner's Constitutional Rights under the First, Eighth and Fourteenth Amendments.

Respectfully submitted,

Marjorie Johnson

APPENDIX

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November 14, 1988 -- No Conclusion

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Court Order dated October, 1987.....D-3

Order of Court

And now to-wit, this _____ day of 1987

In The Circuit Court of Cook County, Ill.
Municipal Department

First District

Order of Court

And now, this 6th day of August, 1987. Trial export by Court finding Issue versus defendant judgment for Plaintiff in the amount of $716.43.

Presiding Judge

Dennis Berkbigler

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MONTGOMERY WARD,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 87-2663
	)	
MARJORIE JOHNSON,	)	
	)	
Defendant-Appellant.	)	

O R D E R

It appearing to this Court that no Appellee's brief has been filed nor any extensions sought therefor, it is hereby

ORDERED that if Appellee fails to file its brief on or before May 17, 1988, the case will be considered on the Appellant's brief alone without oral argument, pursuant to Supreme Court Rule 352(a) as amended.

_____
Allen Hartman,
Presiding Judge

_____
Michael A. Bilandic,
Justice

_____
Anthony Scariano,
Justice

Dated: May 3, 1988

IN THE
APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

MONTGOMERY WARD & CO., INC.	) Appeal from the
	) Circuit Court of
Plaintiff-Appellee,	) Cook County
	)
v.	) No. 86 MI-171080
	)
MARJORIE JOHNSON	) Honorable Dennis
	) L. Berkbigler,
Defendant-Appellant.	) Judge Presiding

ORDER

Defendant, Marjorie Johnson, appeals from a judgment entered in favor of plaintiff, Montgomery Ward & Co., in an action to collect the unpaid balance on a credit card account. Judgment was entered for plaintiff for $716.43. In her pro se appeal, defendant contended that the judgment was erroneous because it included charges for a service contract which she had previously cancelled. Although plaintiff has not filed a brief as Appellee, this does not affect the disposition of this appeal. See, First Capitol Mortgage Corp. v. Talandis Construction Corp. (1976), 63 Ill.2d 123, 131, 345 N.E.2d 493.

In reviewing the record, we note that plaintiff's case relied on a series of documents (a credit application, billing statements, a computer printout, service orders and solicitations for service contracts) which the Court reviewed into evidence, but which defendant did not include in the record on appeal. We are unable to address the merits of defendant's appeal where she has failed to present a complete record of the evidence introduced at trial. (Berner v. Kielnik (1983, 117 Ill. app. 3d 419, 423-24, 453 N.E.2d 729.) We recognize that defendant is proceeding pro se; nevertheless, "[w]hile the court is always aware of the basic elements of fairness and procedural due process, a party appealing pro se must still comply with the established rules of procedure." Lill Coal Co. v. Bellario (1975), 30 Ill. App. 3d 384, 385, 332 N.E.2d 485.

Sufficient record evidence exists, however, to demonstrate that: (1) although

defendant claimed at trial and on appeal that she cancelled her service contract months before this action was filed, she offered no documentary evidence to support this claim; and (20 service calls were made long after the contract was allegedly cancelled. We find no basis for disturbing the judgment entered below.

Accordingly, the judgment of the Circuit Court of Cook County is affirmed.

Judgment affirmed.

HARTMAN, P.J., with BILANDIC and SCARIANO, JJ., concurring.

Petition for Rehearing and Clarification

The Court has misapprehended the application of fact. Appellant has stated: Appellant produced sworn certified documents to the fact there were no repairs made in her home. Also there was a blank application in the original file no documented evidence to support their case. As stated in the Court decision, "there was a series of documents." They were not present in the file when Appellant had it pulled. Appellant personally made copies of everything that was in the Court file. There was nothing there.

Also, Appellant prays that the Court will hear her plea. Appellee has not adhered to Court procedure. They filed no response to Appellant's Court appeal after having been given additional time to do so. With Appellant's evidence Appellant prays to have her day in Court.

68105

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
Supreme Court Building
Springfield, ILL 62706
(217) 782-2035

April 5, 1989

Ms. Marjorie Johnson
8254 S. Buffalo
Chicago, IL 60617

No. 68105 - Montgomery Ward & Co., Inc. respondent, v. Marjorie Johnson, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate court on April 27, 1989.

No. 68105

SUPREME COURT

STATE OF ILLINOIS

Montgomery Ward & Co., Inc.	)	
	)	
Respondent	)	Appeal From
	)	
vs.	)	Appellate Court
	)	First District
Marjorie Johnson,	)	AC1-87-2663
	)	
Petitioner	)	

ORDER

This matter coming on to be heard upon the motion by petitioner, pro se, for leave to file a motion for reconsideration of the order denying petition for leave to appeal, notice having been serviced upon all parties and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that the motion is DENIED. May 8, 1989

The court order dated October, 1988 stated there were some (20) twenty service calls made that were not a part of the official court transcript. The only question asked was "did my daughter sign a work order for repairs in August of 1985" which I answered no.

How could this alleged data be obtained when there were no documents in the file also opposing attorney did not file a brief.

Respondent questions the issue of (20) twenty repairs. Were they made over the life time of the contract from 1976 through August, 1985 or were they for the period of 1985? Reflect B-1, B-1, B-1 of Appendix.